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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1952 1953

No. ~~674~~ 25

JACK CORBETT and EL PASO BASEBALL CLUB, INC.,

Petitioners,

vs.

ALBERT B. CHANDLER, Individually and as Commissioner of Baseball, *et al.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

FREDERIC A. JOHNSON,
Counsel for Petitioners,
511 5th Avenue,
New York 17, New York.

MAURICE H. KOODISH,
707 St. Paul Bldg.,
Cincinnati 2, Ohio,

MORSE JOHNSON,
921 Dixie Terminal Building,
Cincinnati 2, Ohio,

Of Counsel.

THE COURT PRESS, 130 Cedar Street, N. Y. C.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

To the Honorable Fred M. Vinson, Chief Justice of the United States and Associate Justices of the Supreme Court of the United States.

Your petitioners respectfully show:

I.

Statement of the Matter Involved.

The single question presented to this Court is whether professional baseball is subject to the Federal Anti-Trust Statutes of the United States.

The petitioners, the plaintiffs, make the following allegations in their complaint.

The petitioner, the plaintiff Jack Corbett, is the organizer and owner of the petitioner, the plaintiff, the El Paso Baseball Club, Inc. (hereinafter referred to as "El Paso") (R. 2).

Petitioner, plaintiff, El Paso, is a corporation organized under the laws of Texas and is the owner of the baseball franchise for El Paso in the Arizona Texas League (R. 2, 12, 13).

These above named petitioners complain that the defendants are violators of the Sherman Anti-Trust Law and the Clayton Act in the following respects growing out of these ensuing situations, organization and background:

This organization of the defendants is known as "Organized Baseball" and is synonymous with the professional game. It consist of two Major Leagues, The National League and The American League (R. 3); and the Minor Leagues or National Association of Professional Baseball Leagues, classified into AAA, AA, A, B, C and D Leagues (R. 6). Petitioner El Paso was at all times herein mentioned a part of Organized Baseball by virtue of its membership in a Minor League (R. 13). Organized Baseball is governed by the Major League Agreement, Major League Rules, Major-Minor League Agreement, Major-Minor League Rules and The National Association Agreement (R. 6).

The revenues and profits of Organized Baseball are derived from the following activities. Each Major League carries out a seasonal schedule of games. Each Minor League carries out a similar seasonal schedule. Admission is charged to the public to view

the games in the baseball parks (R. 4). The Major League clubs broadcast and telecast the exhibition of the games as they are being played. They derive great revenues by virtue of these activities (R. 5) from advertisers or sponsors of products such as beer, chewing gum, cigarettes and breakfast foods. In carrying out the schedule of the games, state lines are systematically crossed. In broadcasting and telecasting the waves and beams are sent to almost every hamlet of the United States.

Certain Minor Leagues also broadcast and telecast their games for economic profit and gain (R. 6). Like revenues are also obtained from the playing of the World Series which is a contest between the pennant winners of the two Major Leagues (R. 5). Certain of the winners of the pennants in the Minor Leagues likewise play each other at the end of the season in the Little World Series. During the season, there is an All Star Game consisting of a contest between the star players of the two Major Leagues (R. 5). All of these games, the World Series, the Little World Series and All Star Game, derive large revenues by reason of the broadcast and telecast thereof.

Petitioners allege in their cause of action that the defendants are in violation of the Sherman Anti-Trust Law (26 Stat. 209; 15 U. S. C. A., Sections 1, 2, 3) and the Clayton Act (38 Stat. 731; 15 U. S. C. A., Section 15).

This cause of action alleges that the defendants have entered into a combination and conspiracy in restraint of interstate and foreign commerce and that they have conspired to monopolize professional baseball in the United States and Mexico, thereby de-

priving petitioners of their right to employ players of Mexican nationality (R. 15-16).

Organized Baseball maintains its monopoly over the exhibition of professional games within its parks and over radio and television for profit in interstate and foreign commerce through its exclusive control over the market for professional players. The players are employed by their respective clubs under uniform contracts. These contracts contain a provision conferring upon the employing club the irrevocable title and right to the player's services whether the player renews his contract or not (R. 15). This reserve clause compels the player's adherence to his club under the sanction of a blacklist (R. 9), and through the reciprocal nature of its binding force pursuant to agreement with an independent League in Mexico (R. 12, 13).

The uniform contract contains an assignment or involuntary transfer clause. This clause permits the Major League clubs to own Minor League clubs or "Farms" and to sell the services of the players on such clubs (R. 6).

Organized Baseball also maintains its monopoly over the owners of franchises in the various leagues by the threat of blacklisting which is provided for and enforceable under aforesaid governing Agreements and Rules (R. 6) against any violator of these monopolistic regulations. If a club owner is deemed a violator, no professional player can contract with him except on pain of being barred by blacklist from the game. No other club owner can permit his club to take the field against another club owner without being subject to blacklist and permanent expulsion.

Organized Baseball has a Commissioner, who is in effect the titular head of the game.

Against the above background, the petitioners in 1949 signed four players of Mexican nationality to play on the El Paso Club (R. 13). These players were capable and not otherwise disabled from entering into the professional baseball arrangement for profit with the petitioners. It is fairly inferable that petitioners would have reaped an economic gain by virtue of the exhibition of baseball with such Mexican players in their line-up in El Paso by creating interest among the large Mexican population in Texas, as well as interest by Mexican nationals residing in Mexico. Contemplated use of such players' skills would have enhanced the value of petitioners' franchise and with the probable result that a demand for broadcast and telecast of petitioners' games into Mexico would have followed for economic gain.

Early in 1949, defendant Albert B. Chandler, as Commissioner and governing head of Baseball, entered secretly into an agreement with the president of the Mexican National League for the mutual recognition by the National Association of Professional Baseball Leagues and the Mexican National League of the binding force of the right of reservation in the contracts of their respective clubs (R. 9, 12). The Mexican National League had been a competitor of Organized Baseball (R. 9). Petitioners herein acquired the franchise of the El Paso Club in the Arizona Texas League prior to the aforesaid secret agreement between defendant Chandler and the president of the Mexican National League (R. 12, 13), and did not know of its existence when they signed four

players from clubs in that League and attempted to place a fifth under contract (R. 12, 13). The authority of defendant Chandler to enter into the agreement with the president of the Mexican National League and for defendant George M. Trautman, president of the Minor Leagues, to enforce it against petitioners and others, was established by proceedings within Organized Baseball. Petitioners were deprived of the services of the players whom the corporate petitioner had placed under contract, and the individual petitioner was disciplined for conduct detrimental to Baseball for his continued disregard at the beginning of the season of 1950 of the validity of the reciprocal agreement with the Mexican National League (R. 13, 14). Petitioners exhausted their remedies within Organized Baseball by protest and appeal (R. 13).

The above acts of Organized Baseball, meaning the defendants who fully ratified the agreement of Commissioner Chandler in this respect, deprived petitioners of the opportunity of acquiring the services of five Mexican players under contract and of duly transferring and assigning such contracts for profit.

It should be noticed that although Organized Baseball enforced affirmatively the secret Chandler agreement as against petitioners, the Mexican Courts at the instance of a player in the Mexican National League declared the right of reservation in its contracts contrary to The Mexican Constitution and were ready to enforce this decree—from which no appeal was taken—by imprisonment of the owners involved (*Felipe Montemayor* v. *Impulsora Deportiva, S. A.*, Central Board of Conciliation and Arbitration of The North-

ern Territory of Lower California—File No. 73/950, May 30, 1950). Petitioners therefore claim that the structure of Organized Baseball is an unreasonable and unlawful monopoly and has cast them in damages (Hearings Before The Subcommittee on Study of Monopoly Power of The Committee on The Judiciary, House of Representatives—82nd Congress, First Session, 1301-1303—[hereinafter referred to as "Hearings"]).

In consequence of the injury inflicted upon petitioners in their business by defendants' conspiracy in restraint of trade and their monopoly, petitioners brought this action for treble damages in pursuance of Section 4 of the Clayton Act, 38 Stat. 731, Section 4 (15 U. S. C. A., Section 15), on April 14, 1951 in the United States District Court, Southern District of Ohio, Western Division (R. 1).

The defendants, respondents, moved to dismiss the petitioners' complaint on the grounds that the Court lacked jurisdiction over the subject-matter of the cause of action, and that the complaint failed to state a claim against defendants upon which relief could be granted (R. 17-20).

The District Court granted the defendants' motion and dismissed the plaintiffs', petitioners', action on January 25, 1952 (R. 20). On February 20, 1952, plaintiffs, petitioners, filed notice of appeal to the United States Court of Appeals for the Sixth Circuit from the order of dismissal of the District Court (R. 21). On February 20, 1953, the Court of Appeals affirmed the order of the District Court dismissing petitioners' action (R. 25).

II.

Jurisdictional Statement.

(a) Statutes Giving Jurisdiction.

Plaintiffs, petitioners, assert that the defendants are in violation of the Anti-Trust Statutes.

Sherman Anti-Trust Law, 26 Stat. 209, Par. 1, 15 U. S. C. A., Section 1:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: * * *."

Sherman Anti-Trust Law, 26 Stat. 209, Par. 2, 15 U. S. C. A., Section 2:

> "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be guilty of a misdemeanor, * * *."

In consequence of the conduct of the defendants, plaintiffs, petitioners, have been injured in their business and therefore bring this action for treble damages under Section 4 of the Clayton Act, 38 Stat. 731, Section 4, 15 U. S. C. A., Section 15:

> "Any person who shall be injured in his business or property by reason of anything forbidden

in the antitrust laws may sue therefor in any district court of the United States in the district in which the Defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, for the cost of suit, including a reasonable attorney's fee."

The District Court on defendants' motion, dismissed plaintiffs', petitioners', action on the grounds that it lacked jurisdiction of the subject matter of the complaint and on the further grounds that the complaint does not state a claim upon which relief can be granted.

In accordance with the statute, Title 28, U. S. C. A. 1291, plaintiffs, petitioners, appealed the final order of dismissal of the District Court to the United States Court of Appeals for the Sixth Circuit. On February 20, 1953, the United States Court of Appeals for the Sixth Circuit affirmed the order of dismissal and said order was entered on that day.

The jurisdiction of the United States Court to review the matter on certiorari is invoked under statute Title 28, U. S. C. A., Sections 1254 and 2101 (c).

In this case the United States Court of Appeals for the Sixth Circuit has rendered a decision in conflict with the decision of the United States Court of Appeals for the Second Circuit on the same matter (Supreme Court Rule 38, par. (5) (b)). In the case of *Gardella* v. *Chandler*, 172 F. 2d 402, the United States Court of Appeals for the Second Circuit held that the complaint therein raised issues of fact as to whether or not organized professional base-

ball was engaged in interstate commerce and subject therefore to the Anti-Trust Acts of the United States by reason of the sale by the clubs of the rights to broadcast and telecast the games. In this case the United States Court of Appeals for the Sixth Circuit in affirming the order of dismissal of the District Court has held that organized professional baseball is sport, not trade, the business of giving exhibitions of baseball is purely a State affair and not subject to the Anti-Trust Laws of the United States. In rendering its decision in this case upon the authority of *Walter J. Kowalski, Plaintiff-Appellant* v. *Albert B. Chandler, Individually and as Commissioner of Baseball, et al., Defendants-Respondents*, decided simultaneously, the Court of Appeals for the Sixth Circuit avoided any doubt that its decision was in direct conflict with the decision of the United States Court of Appeals for the Second Circuit on the same matter. This conflict was plainly indicated by the reliance of the Court of Appeals for the Sixth Circuit upon the following passage from the dissenting opinion in *Gardella* v. *Chandler, ibid.*, which it quoted in its order:

> "'In dealing with such a unique aggregate as organized baseball and with a decision in respect to it which seems to be directly in point on the facts, we should not be astute in seeking to anticipate that the court which has the power to do so will change that decision. To do so would not only be an unwarranted attempt to usurp the authority of that court but would make its task in general much more difficult since it would lead to a constant alteration in the lower courts of its decisions on specific fact situations in the light of what would appear to be differing rules stated

in the course of deciding later cases on different facts.' "

It is most respectfully submitted that the Court of Appeals for the Sixth Circuit in addition to adopting a specific ground for the grant of certiorari provided by Supreme Court Rule 38, par. (5) (b) has invited such review.

In this case the United States Court of Appeals for the Sixth Circuit has decided a federal question in a way that is probably in conflict with the applicable decisions of this Court. Over 30 years ago this Court decided in *Federal Baseball Club* v. *National League,* 259 U. S. 200, that professional baseball, or the business of giving exhibitions of baseball, is purely a State affair and that any interstate activity is a mere incident not the essential thing—and therefore professional baseball was not subject to the Federal Anti-Trust Laws. Recent decisions of this Court interpreting the scope of the commerce clause in the Federal Constitution show that that case can no longer be followed beyond its own facts (*Lorain Journal* v. *United States,* 342 U. S. 143).

Clearly the question of whether or not Organized Baseball by the sale of radio and television rights is engaged in interstate commerce is of importance in the administration of the anti-monopoly statutes of the United States. There is a conflict of decisions between the Circuits; and The Subcommittee on Study of Monopoly Power of The Committee on The Judiciary, House of Representatives, 82nd Congress, Second Session has recommended that legislation should be passed to regulate Organized Baseball. Does Congress have such power in the light of the decision at bar?

III.

The Question Presented.

Only one question is presented by this petition. That is whether the United States District Court has jurisdiction of the subject matter of this action. In direct application are the activities and organization of professional baseball as set forth in plaintiffs', petitioners', complaint, subject to the Federal Anti-Trust Laws.

IV.

Reasons Relied Upon for the Allowance of the Writ.

(1) In this case the United States Court of Appeals for the Sixth Circuit has rendered a decision which is in conflict with the decision of the United States Court of Appeals for the Second Circuit (*Gardella* v. *Chandler*, 172 F. 2d 402).

(2) In this case the United States Court of Appeals for the Sixth Circuit has decided the question of the scope of the commerce Clause in a way probably in conflict with the applicable decisions of this Court.

(3) The Congress of the United States believes that organized professional baseball is not beyond the Federal jurisdiction. This belief is in conflict with the decision of the United States Court of Appeals for the Sixth Circuit in the case at bar. On page seven of the Report of The Subcommittee on Study of

Monopoly Power of The Committee on The Judiciary, House of Representatives, 82nd Congress, Second Session (hereinafter referred to as the "Report"), it is stated:

> "After full review of all of the foregoing facts and with due consideration of modern judicial interpretation of the scope of the commerce clause, it is the studied judgment of the Subcommittee on the Study of Monopoly Power that the Congress has jurisdiction to investigate and legislate on the subject of professional base ball."

The sole reason for the dismissal of the case at bar was the lack of jurisdiction over professional baseball. In the *Gardella* case, the allegations of the complaint indicated that the defendants exhibited the baseball clubs in competition against one another according to a prearranged schedule at specified locales, and permitted these games to be the subject of broadcasting and telecasting for large sums paid by sponsors. Judge Hand was of the opinion that television created the same indivisible unit between the players and the spectators as exists between actors and audience in a theatre, and that the situation was the same as though a state boundary ran between the grandstand and the foul line. However, he took the view that issues of fact existed as to whether or not Organized Baseball was enaged in interstate commerce owing to the necessity for proof that the income from this novel source was sufficient with other interstate activities to color the whole with an interstate character. Judge Frank adopted the position that the income from radio and television was "velvet"; and that it was sufficient to prove upon the trial that it was substantial in order for Organized

Baseball to be found engaged in interstate commerce. *Martin* v. *National League Baseball Club*, 174 F. 2d 917 (2 Cir.), explained these divergent views in *Gardella*. *Fisher's Blend Station* v. *State Tax Commission*, 297 U. S. 650 cited upon the original *Gardella* appeal had previously upheld the principle that the transmission of communication through a mechanism within the exclusive regulatory power of Congress was interestate commerce in contrast to unaided human vision across a state boundary resulting simply from the mere extension of land.

The *Martin* and *Gardella* cases antedated by two years the investigation of Organized Baseball by Congress. Although the circumstances were not touched upon either at the Hearings or in the Report, the television system by 1951 had been completed or virtually completed from coast to coast. Its effect is sharply accentuated by the data prepared by the Subcommittee. Whereas in 1950, the paid attendance for Major League games during the season was 17,462,977 and in 1951, 16,213,626, with the respective totals 17,705,113 and 16,607,678 arising from greater attendance at the All Star and World Series games in the later year, the seasonal Minor League attendance dropped from an estimated 34,533,000 in 1950 to 27,519,000 in 1951 (Hearings, 1616). Meanwhile the receipts of the Major League clubs for radio and television increased from $3,365,500 in 1950, 10.5% of their total revenue, to $4,561,312.50 as a minimum (Report, 6). The total attendance for the Major and Minor Leagues of 52,238,000 in 1950 declined to 44,127,000 in 1951. Thus, while Major League receipts from radio and television went up between seasons by over 33⅓%, Minor League at-

tendance dropped by approximately 20%. We thus have a legislative finding upon an exhaustive review of the facts underlying the present administration of Organized Baseball to show that defendants are seriously engaged in interstate commerce. Congress did not have to reenact the Sherman Law to confer jurisdiction over the case at bar upon the Federal Courts. If the Courts do not have this jurisdiction, that signifies that the Sherman Law in exhausting Congressional competence over commerce requires the reinforcement of a constitutional amendment to include professional sports and baseball most conspicuously. The Report states (p. 12): "Mutual Broadcasting System estimated that 69,000,000 persons in the United States listened to one or more of the World Series games (Sporting News, October 31, 1951, p. 21)."

The Court of Appeals for the Sixth Circuit in the case at bar relied upon the decision of this Court rendered in the *Federal Baseball Club* case of 1922. This decision was made many years before radio and television provided any income whatsoever for Organized Baseball. In 1929, while this condition still existed (Report, 6), The National League and The American League received the respective sums of $20,614.22 apiece from their separate contracts with the Western Union Telegraph Company (Hearings, 1327, 1411). Apparently, these sums were never exceeded (Ibid., 1339, 1425). Unlike radio and television, this wire service was not a source of competition on the part of industrial or commercial advertisers. The *Federal Baseball Club* case (Record on Appeal, ff. 442-447), shows that this service was the source of $18,000 for The National League from 1913 to 1917, inclusive, and never ran to any indi-

vidual club. Under these circumstances, it is impossible to add to the cogency of Judge Hand's disregard of this factor in *Gardella, supra,* particularly, when, as he points out, it was never mentioned by Mr. Justice Holmes. Furthermore, counsel for the Leagues in 1922 did not consider that the wire service involved the question as to the effect of the direct transmission of the sights and sounds of the game by diffusion from a central source. Had that issue been before this Court, the resourceful counsel for the Leagues would not have admitted the arguable application to that supposititious case of the commerce clause under *International Textbook Company* v. *Pigg,* 217 U. S. 91 (Brief of defendants in error, pp. 52-53). In short, it was conceded that wire service did not involve sights and sounds, which might then have meant interstate commerce.

The wire service rarely did more than transmit inning by inning scores, with occasional play by play accounts of the games for extremely important games upon which a pennant race might have or seemingly depended. The striking differentiation between radio and television and the wire service is that the latter was at no time the subject for special payments to The National Commission for the World Series. As has been stated, the television and radio revenue alone for the World Series amounted to $1,075,000 for 1951, while the All Star Game produced radio and television revenue of $110,000. The dissemination to private customers of the wire service of Western Union could not possibly compare in any commercial sense with the power Organized Baseball and the Major League club owners now have over the buyers' market throughout the United States and beyond her

borders. The wire service was not the subject of competition, including that of ownership of the club franchises, by manufacturers of beer, and other products. The consequences of the reasoning of the Court below is:

> That whatever advances science has made or will make in the direct transmission of the sights and sounds of the game through radio and television, and whatever use the defendants may make of these advances for commercial gain either by selling the rights to use them for advertising purposes or to sell the club franchises as such to producers and manufacturers, Organized Baseball as the source for these media affords absolute immunity from governmental regulation, under the anti-monopoly statutes, and the commerce Clause.

The Major League owners are now in monopolistic control over a rapidly growing domain of industrial advertising. They control many of the Minor Leagues and their clubs. The Commissioner owes his reelection every seven years to the vote of 12 or 75% of their number. They dictate how the reserve clause and the intricate provisions related to it must be construed and enforced. Congress has pertinently refused with all of the myriad facts intertwined in the conduct of the modern game before it, to grant Organized Baseball the legislative immunity sought in the wake of the *Gardella* case from the anti-monopoly statutes (Report, 230).

If the *Federal Baseball Club* case, nevertheless, remains the law of the land, Congress is in the anomalous position of being able to regulate radio and tele-

vision while it cannot regulate in any form or manner the business of any of the defendants, when they are concerned directly with the dissemination of sporting exhibitions over the self same media. It has been said, and may appear as the real reason for the reluctance of the Court below to take jurisdiction over the case at bar, that baseball is the national pastime; that it is loved by all in this country; that the players are revered; that to regulate the game and take jurisdiction might defeat the game.

These propositions are merely propaganda put out by the defendants to avoid the controls that Congress deemed necessary over sixty years ago for the regulation of monopolies, and which have now been specifically found wise to apply to Organized Baseball. Petitioners show a glaring instance of the misconstruction of the reserve clause in contradiction to its settled judicial interpretation in the United States that was conceded to be correct before this Court in the argument of the *Federal Baseball Club* case itself (Brief of defendants in error, p. 22). Further, the Constitution of Mexico in its heroic effort to blot out any form of peonage through Article 5 had apparently rendered the right of reservation invalid within her jurisdiction. Organized Baseball has remained heedless to the significance of that result.

The necessity for the maintenance of the power of Congress over the professional game within the comprehensive provisions of the Sherman Act (*United States* v. *Frankfort Distilleries*, 324 U. S. 293; *Sugar Institute* v. *United States*, 297 U. S. 553, 600), has strikingly been illustrated by the complete reversal within the last four years of the views of Senator Johnson, who is also president of the "A" Western

League (see New York Times—Late City Edition—Saturday, March 21, 1953, page 21, col. 6; Report, 1). During that period, television has passed through its early infancy. The Major League owners will remain a law unto themselves if the doctrine of *stare decisis* allows the authority of the *Federal Baseball Club* case to survive under existing conditions. The unbridled discretion of these owners has recently been reaffirmed. While The National League permitted the Boston club to move to Milwaukee, The American League vetoed the corresponding effort of the St. Louis club to transfer its franchise to Baltimore (New York Times—Late City Edition—Thursday, March 19, 1953, page 39, columns 2 and 3, by Arthur Daley).

This petition is for a writ of certiorari to review the decision of the Court of Appeals for the Sixth Circuit, whose opinion treated Organized Baseball as a "game" or "sport" vis-a-vis such organization vs. professional player; and vis-a-vis such organization vs. Minor League club owners: to wit, petitioners. In short, for all purposes and under all situations, and whatever revenues and profits are derived out of the game's broadcasts and telecasts, considered separately, or in connection with its other forms of income, Organized Baseball stays beyond the reach of the commerce Clause and remains within the definitive category of a "game" or "sport", in the face of a formal, detailed and exhaustive investigation by the Congressional subcommittee, who arrived unqualifiedly at a "studied judgment" to the contrary.

WHEREFORE, your petitioners pray that a writ of certiorari issue under the seal of this Court, directed to the United States Court of Appeals for the Sixth Circuit, commanding said Court to certify and send

to this Court a full and complete transcript of the record and of the proceedings of the said United States Court of Appeals for the Sixth Circuit had in the case numbered and entitled on its Docket, No. 11623, *Jack Corbett and El Paso Baseball Club, Inc., Plaintiffs-Appellants* v. *Albert B. Chandler, Individually and as Commissioner of Baseball, et al., Defendants-Respondents,* to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the judgment herein of said United States Court of Appeals for the Sixth Circuit be reversed by the Court, and for such further relief as to this Court may seem proper.

Dated, March 24, 1953.

FREDERIC A. JOHNSON,
Counsel for Petitioners.

MAURICE H. KOODISH,
MORSE JOHNSON,
Of Counsel.